

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.684 of 2007

Nagarani

.. Petitioner

Vs

1. State of Tamilnadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai-8.

.. Respondents

Petition filed under Article 226 of the Constitution of India for
issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Swamidoss Manokaran

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, who is daughter of detenu, Sulochana @ Aruppu Sulochana, wife of Vasudevan, who was incarcerated by order dated 31.3.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding her as a Bootlegger, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 31.3.2007 in his Memo No.134/BDFGISSV/2007 against the petitioner's mother, Sulochana @ Aruppu Sulochana, wife of Vasudevan, now confined at Special Prison for Women, Puzhal, Chennai, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set her at liberty.

2. On 16.3.2007, the Inspector of Police, Prohibition Enforcement Wing, Madhavaram Unit, along with police party, while conducting prohibition raid at Mathur, found a woman, the detenu herein, possessing a plastic gunny bag and by receiving money giving something from the gunny bag to the persons standing in front of her. On seeing the police people, the said woman tried to escape from that place, but she got caught by the police. It was found that the gunny bag contained 488 numbers of 50 ml duplicate Karanataka arrack sachets. The detenu was arrested at 14.15 hours and a case was registered in Crime No.26 of 2007 on the file of PEW Madhavaram Unit under Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A) of the Tamil Nadu Prohibition Act. Samples of arrack were taken and were sent for chemical analysis, which disclosed that the arrack was mixed with atropine of more than 8.3% mg, which would be injurious and also fatal, if it not treated vigorously.

3. The second respondent, taking note of this case as a ground case and finding that there are three adverse cases pending against the detenu for the offences punishable under Sections 4(1)(A)(aaa), 4(1)(i) and 4(1-A) of the Tamil Nadu Prohibition Act, and having satisfied that there is a compelling necessity to detain the detenu in order to prevent her from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a Bootlegger.

4. Since Mr.S.Swamidoss Manokaran, learned counsel for the petitioner wants to restrict his submission only on the ground of delay in considering the representation, we do not propose to go into the other aspects, except to refer the delay in considering the representation as highlighted by the counsel for the petitioner.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide *Tara Chand v. State of Rajasthan*, (1980) 2 SCC 321 and *Raghavendra Singh v. Supdt., Distt. Jail*, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide *Rajammal v. State of T.N.*, (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 31.3.2007. A representation was made to the detaining authority on 7.5.2007. The Government received the same on 7.5.2007 and the detaining authority received the same on 10.5.2007. Parawar remarks were called for from the Sponsoring Authority on 11.5.2007. Remarks were received from the Sponsoring Authority on 14.5.2007. Report sent to the Government on 14.5.2007 itself. The Under Secretary dealt with the file on 16.5.2007 and the concerned Minister dealt with the file on 17.5.2007. Ultimately, the representation was rejected by the Government on 18.5.2007. Even though the rejection letter was prepared on 18.5.2007 and the same was sent to the detenu on 18.5.2007 itself, it was served on the detenu only on 23.5.2007. The delay in serving the rejection letter on the detenu, viz., between 18.5.2007 and 23.5.2007 - a period of five days, was highlighted by the learned counsel for the petitioner. Even

though 19.5.2007 and 20.5.2007 happened to be public holidays, there is no convincing reply on behalf of the State for the delay in considering the representation. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for three days (excluding Saturday and Sunday), between 18.5.2007 and 23.5.2007. There is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad*, (1996) 3 SCC 194 is apposite:

"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide *K.M. Abdulla Kunhi v. Union of India*, (1991) 1 SCC 476 .

9. In the instant case, there is delay of three days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 31.3.2007 is quashed. The detainee is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

ATR

Sd/
Asst. Registrar

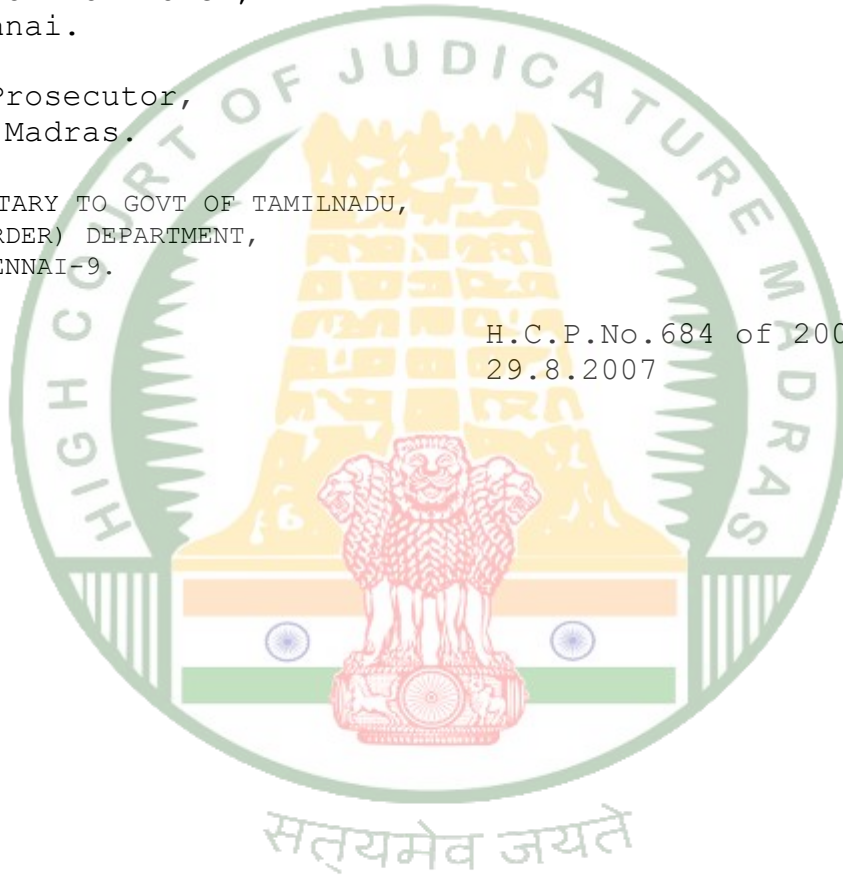
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Sub Asst.Registrar

To

1. The Secretary to Government,
State of Tamilnadu,
Prohibition and Excise Department,
Fort St. George, Chennai-9.
2. The Commissioner of Police,
Greater Chennai, Egmore, Chennai-8.
3. The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. THE JOINT SECRETARY TO GOVT OF TAMILNADU,
PUBLIC (LAW AND ORDER) DEPARTMENT,
FORT ST GEORGE, CHENNAI-9.
JRG (co)
sg 10/9/07

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